In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 933

RUSSELL TROUTMAN, ET AL., PETITIONERS

v.

DONALD RUMSFELD, DIRECTOR, OFFICE OF ECONOMIC OPPORTUNITY, and UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

In this action, the petitioners Troutman (a practicing attorney in Orange County, Florida) and four county bar associations sought to enjoin the institution of legal aid service programs in Orange County and three other Florida counties by the Director of the Office of Economic Opportunity. According to petitioners, if the programs were instituted, Troutman and other Florida attorneys would be forced to compete with OEO lawyers for a clientele that could

afford to pay for legal service. Petitioners asserted that the Economic Opportunity Act of 1964, as amended, 78 Stat. 508, 42 U.S.C. 2701, *et seq.*, was unconstitutional and that the establishment of the legal aid service programs violated the Canons of Professional Ethics and was in excess of the Director's statutory authority (Pet. App. 25-27). Without reaching the merits, the district court dismissed the complaint on the ground that neither the attorney nor the bar associations had standing to maintain the action (Pet. App. 27). The Fifth Circuit unanimously affirmed (Pet. App. 25-35).

The decision of the courts below was correct. As the Fifth Circuit held (Pet. App. 27-29), petitioners did not relate their attack, as taxpayers, upon the Economic Opportunity Act to any specific limitation upon Congress' taxing and spending power, and thus failed to "establish a nexus between that status and the precise nature of the constitutional infringement alleged." *Flast* v. *Cohen*, 392 U.S. 83, 102. Therefore, petitioners were without standing, as taxpayers, to challenge the Act. *Frothingham* v. *Mellon*, 262 U.S. 447. Similarly, as the Fifth Circuit pointed out (Pet. App. 30), petitioners' claim of standing as citizens and attorneys must fail, since those claims of status have not been coupled with any assertion of direct injury stemming from a violation of any specific constitutional or statutory limitations. *Ex parte Levitt*, 302 U.S. 633.

Petitioners' claim that they have standing as competitors of the legal aid services programs is equally without merit. Although they claim to

belong to a licensed trade and thus within the rule of *Frost* v. *Corporation Commission*, 278 U.S. 515, the Florida courts have made clear, as the court below noted, that the licensing of attorneys ~~though they claim to be a licensed trade and thus within the rule of *Frost* v. *Corporation Commission*, 278 U.S. 515, the Florida courts have made clear, as the court below noted, that the licensing of attorneys~~ has no anti-competitive purpose. "It is done to protect the public from being advised and represented in legal matters by unqualified persons * * *" (Pet. App. 31). The decisions of this Court uniformly deny standing to competitors who possess no legal right to be free from competition. *Hardin* v. *Kentucky Utilities Co.*, 390 U.S. 1, 5-6; *Tennessee Power Co.* v. *Tennessee Valley Authority*, 306 U.S. 118; *Railroad Co.* v. *Ellerman*, 105 U.S. 166, 173-174.

No statutory aid to standing can be found in the Ichord Amendment to the Economic Opportunity Act, 42 U.S.C. (Supp. IV) 2809(a)(3). As the court below rightly concluded, the history of the amendment makes clear that it was *not* meant to permit local bar associations to block the adoption of local programs, but merely assured that they would be able to comment at the administrative level on the formulation of plans (Pet. 11-12). Thus, there was no legislative purpose to protect a competitive interest of petitioners; "the purpose of the statutory provision is simply to benefit the public at large by easing the task of administration of the statute * * *" (Pet. App. 34). Petitioners cannot even argue, as do the petitioners in *Association of Data Processing Service Organiza-*

tions v. *Camp*, No. 85, this Term, that Congress has elsewhere expressed a purpose to put competitive restraints upon the activity in question.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1970.

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